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SUBJECT: **ARCHITECTURAL TECHNICAL GUIDE 0024 (January 1, 2005)**
Accessibility for Persons with Disabilities:
Requirements for New and Existing SFH and MFH Construction Projects

PURPOSE:

The purpose of this Architectural Technical Guide (ATG) is to provide a general discussion of federally enacted laws concerning providing accessibility for persons with disabilities and their required implementation with respect to USDA/Rural Development financed single family housing and multi-family housing construction activities as well as the operation of existing multi-family housing projects. Rural Development funded housing construction projects are covered by numerous federal laws that have placed special overlapping design responsibilities on multi-family housing project developers, owners, and operators. These laws exert a negligible impact on single family housing construction but do indirectly provide very useful design guidance for instances where such information would be valuable to single family homeowners. This ATG is intended to briefly summarize these laws; discuss their implementation effects on projects; and introduce their respective design standards. This ATG contains the following major headings:

IMPLEMENTATION RESPONSIBILITIES:

- 1968 Architectural Barriers Act
- 1973 Rehabilitation Act, Section 504
- 1988 Fair Housing Amendments Act to the 1964 Civil Rights Act
- 1990 Americans with Disabilities Act
- Accessibility Requirements and Single Family Housing Lending Actions

IMPLEMENTATION RESPONSIBILITIES:

Federal legislation attempting to provide improved accessibility for persons with disabilities to buildings and facilities in both the federal and private sector has been enacted starting in the 1960s and has gradually been expanded to cover most potential situations in both sectors. Improved accessibility has tended to be directed more toward mobility impairment disabilities than others probably in the design standards referenced in this ATG because design for accommodating mobility impairments typically has the greatest effect on hard construction components (i.e. concrete sidewalk systems), their inherent permanency, and their great cost to modify at a later date. Following is a brief discussion of the federal accessibility laws that currently affect Rural Development financed multi-family housing project construction and operation activities with some overlapping requirements:

1968 Architectural Barriers Act

The Architectural Barriers Act was passed in 1968 to require access to facilities designed, built, altered, or leased with Federal funds. It marked one of the first efforts to ensure access to the built environment. The Access Board was created under the authorities of Section 502 of the Rehabilitation Act of 1973 to develop and maintain accessibility guidelines under this law and to enforce this law. These guidelines, developed as the American National Standards Institute (ANSI) standard, ANSI A161.1, have served as the basis for the standards used to enforce the law, the “*Uniform Federal Accessibility Standards*” (UFAS). Four federal agencies were tasked with implementing the UFAS: the Department of Defense, the Department of Housing and Urban Development, the General Services Administration, and the U.S. Postal Service.

Federal departments, mission areas, and agencies, such as Rural Development, are responsible for ensuring compliance with the UFAS when funding the design, construction, alteration, or leasing of facilities. The Architectural Barriers Act, however, DOES NOT APPLY to single family housing or multi-family housing projects funded by Rural Development. Providing accessibility to these type projects has gradually been covered by other federally enacted accessibility legislation (discussed elsewhere in this ATG).

The Architectural Barriers Act may be downloaded from the following Internet site:

<http://www.access-board.gov/about/ABA.htm>

1973 Rehabilitation Act, Section 504

The Rehabilitation Act was passed in 1973 and expanded the federal government’s role in reducing discrimination against persons with disabilities. Section 504 of the Act was designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance (i.e. lending activities to construct housing projects). It provided that no qualified person with a disability should, on the basis of a disability, be excluded from participation in; be denied benefits of; or otherwise be subjected to discrimination under any program or activity that receives or benefited from federal financial assistance. “Persons with disabilities” were defined *as* persons who had a physical or mental impairment which substantially limited one or more major life activities; had a record of such an impairment; or was regarded as having such an impairment.

The Rehabilitation Act has a major impact on Rural Development funded multi-family housing projects. Section 504 applies to all direct loans in all Rural Development loan areas. Departmental regulations were first issued on June 11, 1982 and all facilities funded by direct loans after that date are required to conform to the design criteria of the “*Uniform Federal Accessibility Standards*” (UFAS). A copy of this design standard may be downloaded from the following Internet site:

<http://www.access-board.gov/ufas/ufas-html/ufas.htm>

Rural Development Multi-Family Housing Program regulations require that a minimum of 5 percent of all dwelling units and all common use facilities (i.e. accessible routes, parking spaces, offices, laundries, community rooms, playgrounds, etc.) in newly constructed projects as well as existing projects constructed after the June 11, 1982 threshold date be designed to be fully accessible in accordance with the design criteria of the UFAS. Where rehabilitation work is involved, the UFAS criteria should be met to the maximum extent possible and without an undue burden. Where the cost of rehabilitation work exceeds 50 percent of the fair market value of a housing project, the rehabilitation effort must incorporate all of the UFAS criteria for new construction.

Information concerning Section 504 of the Rehabilitation Act may be downloaded from the following Internet site:

<http://www.hud.gov/offices/fheo/disabilities/sect504.cfm>

1988 Fair Housing Amendments Act to the 1964 Civil Rights Act

The 1964 Civil Rights Act was amended in 1988 by the Fair Housing Amendments Act which formalized two additional categories where discrimination was recognized as occurring: disability and familial status. It required, with regard to persons with disabilities, that all covered multi-family housing dwellings built after March 13, 1991 be designed and constructed with certain accessible features. It essentially expanded federal involvement to cover most dwellings not already touched by other federal accessibility laws with respect to financing and operation in both the federal and private sectors. It required the owners and operators of covered existing multi-family housing dwellings to provide a reasonable accommodation in rules, policies, and procedures affecting current and potential tenants with disabilities. The owners and operators of existing covered multi-family housing dwellings were not required to pay for the cost of reasonable accommodations not provided to other tenants. The Fair Housing Amendments Act also allowed the tenants of existing projects to make reasonable accommodations at the tenant's expense. It applied to certain building types intended for occupancy as a residence except owner-occupied dwellings with three or fewer units and certain single family dwellings. It required enforcement by the U.S. Department of Housing Development (HUD) and the U.S. Department of Justice (DOJ).

The Fair Housing Amendments Act also required HUD to develop a design standard, the "*Final Fair Housing Accessibility Guidelines*" (FHAAG). These guidelines were codified in the 1991 edition of the Code of Federal Regulations as Appendix II to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. II). The preamble to the guidelines was codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III). The effective date of the new standards was March 6, 1991. The FHAAG did not establish as many or severe design requirements as some other federal legislation accomplished, but its area of coverage was very widespread, affecting all ground level dwellings

and elevator building dwellings financed by both the federal and private sectors. The FHAAG design requirements concentrated on seven functional aspects of covered dwellings:

1. Accessible building entrance on an accessible route,
2. Accessible common and public use areas,
3. Usable doors (by persons using wheelchairs),
4. Accessible route into and through dwelling units,
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations,
6. Reinforced walls for grab bars, and
7. Usable kitchens and bathrooms.

The Fair Housing Amendments Act has a major impact on Rural Development funded multi-family housing projects. Dwelling units constructed after the March 6, 1991 threshold date in all covered building types in all Rural Development direct loan and guaranteed loan financed multi-family housing projects are required to be designed in accordance with the FHAAG. Reasonable accommodations in covered dwelling units in pre-March 6, 1991 constructed housing projects are handled on a case-by-case basis without the required use of any special federal design standard, though all such standards could be considered guides.

The FHAAG may be downloaded from the following Internet site:

<http://www.hud.gov/library/bookshelf09/fhefhag.cfm>

HUD also produced a companion FHAAG manual in 1996, the *“Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of The Fair Housing Act”*, to assist in accomplishing practical, real world, design solutions. This manual may be downloaded from the following Internet site:

<http://www.huduser.org/publications/destech/fairhousing.html>

1990 Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed in 1990 to expand the federal oversight of providing accessibility to cover establishments and facilities considered to be public accommodations, whether funded by federal government actions or private sector activities. Title II of the ADA affects all facilities owned by state and local governments. Title III of the ADA covers all facilities owned by private entities (both new and existing) that accommodate the public.

The Americans with Disabilities Act affects all Rural Development direct and guaranteed loans to construct multi-family housing projects only to a minor degree. It requires that only on-site rental offices and any other spaces open to the general public (i.e. a community room used for voting, polling, meals, meetings, or job training; a dining facility in a congregate housing development that serves the locality as well as tenants, etc.) be designed in accordance with the *“Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities”* (ADAAG). The ADA does not affect the design of dwellings or tenant-only used common facilities of multi-family housing projects. The ADAAG was produced by the Access Board and fairly closely parallels the design requirements stated in both the ANSI A161.1 standard and the *“Uniform Federal Accessibility Standards”*.

A discussion of many aspects of the ADA can be found at the following Internet site:

<http://www.usdoj.gov/crt/ada/adahom1.htm>

The ADAAG may be downloaded from the following Internet site:

<http://www.access-board.gov/adaag/html/adaag.htm>

Accessibility Requirements and Single Family Housing Lending Actions

Rural Development lending actions for single family housing cases are negligibly impacted by all the above Congressional Acts because single family housing construction is either: not a federal facility per the Architectural Barriers Act; exempted by Rural Development regulations from the 5 percent rule of the Rehabilitation Act; an exempted building type per the Fair Housing Amendments Act; or not a facility of public accommodation per the Americans with Disabilities Act. Single family housing borrowers with a need to provide accessible design in their residences, however, can benefit from a wealth of design information contained in the UFAS, FHAAG, and ADAAG discussed above and are encouraged to visit the appropriate Internet sites listed to seek this type of information.

Should you have any further questions on this subject, please contact the State Architect.

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